

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

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U.S. DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
2014 MAY 22 A 9:58

Kevin Davis,

Plaintiff,

v.

Jeanette W. McBride; Warren B. Giese,
Solicitor; Inv. Damon Robertson; Hans
Pauling, *Public Defender*; Richard
Cathcart, *Asst. Solicitor*; Barber A. Scott,
Former Clerk of Court; Tara Brown,
Grand Jury Foreperson; and Warden
John Pate, *individual and official capacity*
throughout case,

Defendants.

No. 2:14-cv-906-RMG

ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge recommending that the Court dismiss this action without prejudice and without issuance and service of process. (Dkt. No. 11). As set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Plaintiff, a state prisoner, filed this action pro se and *in forma pauperis*. Pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(e) DSC, this case was assigned to a Magistrate Judge for all pretrial proceedings. Under established local procedure in this judicial district, the Magistrate Judge conducted a careful review of the complaint pursuant to the provisions of 28 U.S.C. § 1915 and in light of the following precedents: *Neitzke v. Williams*, 490 U.S. 319 (1980); *Estelle v. Gamble*, 429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972); and *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978). After conducting this initial review, the Magistrate Judge

then issued the present R&R. (Dkt. No. 11). Plaintiff failed to file timely objections to the R&R.

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a de novo determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

Discussion

After review of the record and the R&R and finding no clear error on the face of the record, the Court agrees with and adopts the R&R as the order of the Court. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). The Court agrees this action must be dismissed for failure to state a claim.

Conclusion

As set forth above, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 11). Accordingly, the Court dismisses this action without prejudice and without issuance and service of process.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

May 22, 2014
Charleston, South Carolina